

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15471 of John Dashtara, pursuant to 11 DCMR 3108.1, for a special exception under Sub-section 2003.1 to continue to operate an amusement arcade on part of the ground floor as authorized by BZA Order No. 14695 dated December 31, 1987 in a C-2-A District at premises 3255 M Street, N.W. (Square 1207, Lot 893).

HEARING DATE: March 20, 1991
DECISION DATE: April 3, 1991

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located on the north side of M Street, between Wisconsin Avenue and Potomac Street, N.W. It is known as premises 3255 M Street, N.W. and is located in the C-2-A District.

2. The site is rectangular in shape. It contains 3,190 square feet in land area. It has a frontage of 29 feet along M Street and a depth of 110 feet. A ten-foot wide public alley is located to the rear of the site. The site is improved with a one-story brick structure.

3. The site is located in the C-2-A commercial strip which runs along M Street in Georgetown. The area surrounding the site is characterized by a mixture of commercial uses fronting M Street and Wisconsin Avenue, and residential uses in the adjoining R-3 District to the northwest of the site. The site is located within the boundaries of the Georgetown Historic District.

4. Board of Zoning Adjustment (BZA) Order No. 13055 dated February 4, 1980 granted a special exception to the applicant to change a nonconforming use from the retail sale of books, magazines, novelties, records and other related items (sexually-orientated business establishment) to a family amusement center. BZA Order No. 13997 dated September 30, 1983 granted the applicant a special exception to continue to operate the family amusement center at the site for four years. BZA Order No. 14695 granted another request for a special exception to continue operating of the arcade at the site for an additional four-year period.

5. In the subject application, the applicant is again seeking special exception relief to continue operating the amusement arcade until December 31, 1999 when the lease on the property expires. The amusement arcade is known as "Time Out Family Amusement Center."

6. The C-2-A District permits matter-of-right low density development, including office, retail and all kinds of residential uses to a maximum floor area (FAR) of 2.5, with nonresidential uses limited to 1.5 FAR, a maximum height of 50 feet and a maximum lot occupancy of 60 percent for residential uses.

7. The applicant is requesting a special exception under Sub-section 2003.1 of the Zoning Regulations. The applicable provisions of Section 2003 are as follows:

2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment as authorized in Section 3105 through 3108, a nonconforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in this section.

2003.2 • The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300') in all directions from the nonconforming use.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

2003.7 The Board may require the provision of or direct changes, modifications, or amendments to, any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

8. The applicant maintains that the application meets the requirements of Section 2003. The applicant stated that the existing use is nonconforming and the proposed use is permitted in the most restrictive District in which the existing use is permitted as a matter-of-right. A family amusement center is first permitted as a matter-of-right in a C-3 District. In 1980, the present use replaced a sexually-oriented business establishment, a nonconforming use by virtue of then Section 5103.47 of the Zoning Regulations. The applicant proposes to continue the present

nonconforming use as a family amusement center and simply to extend the period of time until 1999. In support of this request for an eight year approval, the applicant stated that Time Out (the company) has operated this family amusement center in an exemplary manner that has been praised by the community and repeatedly approved by the Board. The applicant stated that Time Out has complied with the conditions imposed by the Board, and in some instances imposed more restrictive operating policies on itself. Based on this proven track record, the applicant believes that continued periodic review by the Board is unnecessary and unduly burdensome on the resources of the Board and Time Out.

9. The applicant maintains that the proposed use will not adversely affect the character or future development of the surrounding area and the use is generally in keeping with the general character of uses and structures. The Regional Manager for the amusement center at the subject site testified that the businesses in Georgetown are generally entertainment oriented. There are restaurants, stores, and movie theaters in the area and the Georgetown Park Mall is directly across the street from Time Out. The Regional Manager testified that there are no similar amusement centers located nearby. Time Out does not generate traffic to the site because its clients are people who are in the area for other business.

The Regional Manager testified that since the last Board approval, Time Out has spent \$164,000 in improvements to the interior and exterior of the site. Among other renovations, the front of the structure was opened-up and glassed-in to allow more light inside. Track lighting was also added for this purpose.

The witness testified that the amusement center is well supervised because three levels of management are represented by persons who reside in the area. The Store Manager is on site on a daily basis. He is supervised by the District Manager who is in turn supervised by the witness, the Regional Manager.

The witness testified that the arcade is governed by the Corporation's policies and procedures manual which is updated constantly. Many of the rules in the manual are more restrictive than conditions imposed by the Board. The witness stated that the arcade offers a variety of electronic and mechanical amusement games. Also, many family-oriented games and rides were installed. The arcade rules prohibit smoking, eating, drinking, loitering and gambling. These rules are enforced through Time Out's uniformed security attendants who are visibly on duty during all operating hours. In addition to security and crowd control, attendants provide change and assistance to patrons of the facilities. An additional attendant is on duty during weekends.

There has been no substantive change in the operations of the arcade since the Board's last approval. The applicant does not propose to change either the amount of space devoted to the use, the design of the facility or the signage.

10. The applicant keeps a comment box near the entrance so that patrons can express their opinions about the arcade. The applicant stated that there have been no complaints about the operation of the arcade. The applicant indicated that the other businesses in the area are in support of the application and that letters have been submitted from many supporters, including the Business and Professional Association of Georgetown (BPAG).

11. The applicant stated that the proposed use will not create any deleterious external effects. Time Out has designed this property to ensure that no noise or vibrations shall intrude upon neighboring property. The noise and vibrations from mechanical amusement equipment are screened. The existing cinder block masonry division walls prevent noise transmission, thus other sound proofing and screening have not been necessary. Time out is unaware of any complaints about the sufficiency of its efforts in this respect.

12. The applicant stated that the facility is operated in a manner that protects the values, utilization and enjoyment of property in the neighborhood.

The applicant stated that the amusement center is a neighborhood facility which provides spur of the moment entertainment of a neighborhood character, suitable for all ages. Time Out does not generate new traffic in the area but serves existing pedestrian traffic in the commercial corridor. Because Time Out depends on traffic attracted by its neighbors, it has a strong interest in preserving and improving the character of the area.

The applicant stated that the site is located in the heart of a diverse commercial corridor, and there is no evidence that the Time Out operation is a more intense or objectionable use than other uses surrounding the site. The applicant stated that Time Out takes great pains to maintain cleanliness and order in its operations. It has an appropriate window display which conforms to the general character of M Street.

The applicant stated that many of the surrounding uses have late hours of operation. In the immediate area, there are bars and restaurants that stay open until the early morning. For example, The Crazy Horse Saloon at 3259 M Street, is open Monday through Sunday from 9:00 p.m. to 2:00 a.m. Georgetown Bagelry at 3245 M Street is open until 2:00 a.m. Sunday through Friday and until 3:00 a.m. on Saturday. J. Paul's Restaurant is open until 2:00 a.m.

daily. Clyde's at 3236-44 M Street is open until midnight Monday through Saturday. Many retail shops and most restaurants in the subject area are open until midnight. The hours of operation of the Time Out Family Amusement Center have been from Monday to Saturday 10:00 a.m. to 11:45 p.m. The hours of operation on Sunday are from 1:00 p.m. until 9:00 p.m.

13. The applicant stated that Time Out has complied with the conditions established by the Board in Order No. 14695 and all previous orders. There are no exterior flashing or neon lights on the outside of the building. All illumination inside of the premises is set back from the face of the windows further than the required 18 inches. The hours of operation comply with the requirements of Order No. 14695. Previous orders required that any person under 12 years of age shall be accompanied by an adult at all times while on the premises. Also, any person 14 years of age or younger is not to be admitted prior to 3:00 p.m. on days when school is in session. Time Out's own chain-wide policy is to deny admission to any patron under the age of 16 years while school is in session. This policy is enforced diligently in all of its stores. Finally, there is no sale of food or beverages on the premises. Time Out intends to comply with these conditions.

14. The applicant stated that granting the relief requested is in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of neighboring property because it meets the requirements of Section 2003 as set forth above.

15. By report dated March 13, 1991 and through testimony at the hearing, the Office of Planning (OP) recommended that the application be approved. OP reported on the evidence presented by the applicant with regard to the location of the site, the proposed use, the kind of equipment installed, the clientele, the hours of operation, traffic generation and sound-proofing.

OP stated that the applicant has been operating the subject amusement arcade for the past 11 years. OP is of the opinion that since the majority of the patronage is from the existing pedestrian traffic, the subject facility should not have any additional impact on the parking and traffic conditions that currently exist in the neighborhood. Additionally, the subject facility would not create a noise level that exceeds that of the existing mixed commercial uses in the area.

OP is of the opinion that the continuation of the existing amusement arcade, as authorized by BZA Order No. 14695, would not tend to adversely impact the neighboring properties nor would it impair the intent, purpose, and integrity of the Zoning Regulations

and Map. Accordingly, the Office of Planning recommends approval of this application with all the conditions set forth in BZA Order No. 14695.

16. By memorandum dated March 5, 1991, the Department of Public Works (DPW) noted that the majority of the applicant's patronage is from existing pedestrian traffic. DPW noted that the facility does not provide on-site parking, nor is it required to do so. DPW pointed out that metered parking is available along M Street except during evening rush hour. The neighboring streets are restricted by residential permit parking (RPP). DPW believes that the transportation impact of the premises is negligible. Therefore, the department has no objection to the request.

17. By letter dated February 22, 1991, the Metropolitan Police Department stated that the property is located in the Second District and is patrolled by Scout Car 77. Based upon review of the application, the Police Department stated that it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

18. By memorandum dated March 12, 1991, the Office of Business and Economic Development (OBED) stated that it does not endorse the location of amusement arcades in residential neighborhoods or school districts; however, this arcade appears to be appropriately located along a vibrant commercial strip. Therefore, OBED does not object to Board approval of this application.

19. By letter dated March 13, 1991, Advisory Neighborhood Commission (ANC) 2E expressed its opposition to the application on the following grounds:

- a. The arcade creates "deleterious external effects" including overcrowded conditions on the already heavily congested M Street; and
- b. The arcade is not compatible with the adjoining residential neighborhood to the north of M Street.

At the public hearing, the ANC testified that neighborhood residents who attended the ANC meeting complained that large groups of people come out of the arcade en masse, disrupting the orderly flow of pedestrian traffic. They also complained that the teens who frequent the facility loiter outside of the property. Representing the views of the neighbors, the ANC pointed out that while the site is surrounded by commercial uses, other neighboring

property is residential. The subject site is located very close to Prospect Street and N Street N.W. The use creates adverse impacts on an already overcrowded M Street.

The Board asked the ANC whether neighbors had filed formal complaints with the proprietor of the business or whether the applicant had violated any of the conditions in the Board's previous order. The ANC did not know the answers to these questions. The ANC expressed an interest in having a community liaison established at the facility to work with the ANC on eliminating the problems complained of by area residents.

20. Responding to the issues raised by the ANC, the applicant pointed out that the streets of Georgetown are congested in general and that congestion does not only exist around one particular establishment. The applicant also expressed an interest in establishing an on-going dialogue with the community.

21. No other parties testified at the hearing in support of or in opposition to the application.

22. By letter dated January 22, 1991, the Business and Professional Association of Georgetown (BPAG) expressed its views regarding the subject application. BPAG stated that it is a 250-member coalition which promotes the mutual interest of the Georgetown business community and enhances the historic character of their commercial district. BPAG stated that it has received no complaints from other businesses or local residents regarding Time Out's operation in Georgetown. Further, there is every indication that Time Out has been a good neighbor by adhering to the conditions that the Board has prescribed regarding hours of operation and restricting access from unsupervised children and young teenagers.

Finally, BPAG stated that as a concerned business association, it has no objection to the applicant's request.

23. Several letters from residents and businesses in support of the application were submitted into the record. The Board also received copies of several comment cards filled out by the applicant's patrons. All of the cards expressed support of the use of the site.

24. One letter of opposition was submitted into the record.

FINDINGS OF FACT:

1. The Board finds that pedestrian congestion in the area is created by the combination of commercial establishments on M Street rather than by the arcade alone.

2. The Board finds that the applicant is a good neighbor and that the applicant affords everyone the opportunity to comment on the operations of the arcade by filling-out comment cards or by talking to the manager on site.

3. The Board finds that the subject property is located a reasonable distance from any residentially-zoned properties.

4. The Board finds that the operations have been consistent with the Board's previous approvals and conditions.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to continue to operate an amusement arcade in a C-2-A District. The granting of such a special exception requires a showing that the proposed use is in harmony with the general purpose and intent of the zone plan and that the proposed use does not adversely affect the use of neighboring property. The applicant must also meet the applicable provisions of 11 DCMR 2003.

The Board concludes that the applicant has met this burden of proof. The Board concludes that the proposed and existing uses are the same and that the proposed use is therefore permitted in the most restrictive District in which the existing use is permitted as a matter-of-right.

The Board concludes that the proposed use will not adversely affect the present character or future development of the surrounding area.

The Board concludes that the proposed use will not create any deleterious effects related to noise, traffic, parking, loading, illumination, vibration, odor, design or siting.

The Board concludes that the proposed use of the property is in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded ANC-2E the "great weight" to which it is entitled.

In light of the foregoing, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

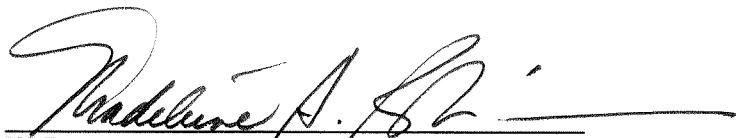
1. Approval shall be for a period of SIX YEARS.
2. There shall be no exterior flashing or neon lights on the outside of the building.

3. Any illumination inside the premises shall be set back at least 18 inches from the face of the windows.
4. Any persons under 12 years of age shall be accompanied by an adult at all times while on the premises.
5. The hours of operation from Monday to Saturday shall be between 10:00 a.m. and 12:00 midnight. The hours of operation on Sunday shall be between 1:00 p.m. and 3:00 p.m.
6. No child 14 years of age or younger shall be admitted between the hours of 10:00 a.m. and 3:00 p.m., on days when school is in session.
7. There shall be no sale of food or beverages on the subject premises.
8. On an annual basis, a representative of Time Out shall appear at a regularly scheduled public meeting of Advisory Neighborhood Commission 2E to provide an update to the community on store operations and respond to any questions or concerns.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell, Charles R. Norris, and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

MAY 18 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15471Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15471

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 18 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. ROBINSON
Acting Director

DATE: MAY 18 1992

15471Att/bhs